

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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In the Matter of)

Market Entry and Regulation of)
Foreign-affiliated Entities)

IB Docket No. 95-22
RM-8355
RM-8392

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PETITION FOR RECONSIDERATION

I. Introduction

BT North America Inc. ("BTNA"), by its attorneys, hereby petitions the Commission, pursuant to Section 1.429 of the Commission's Rules, for reconsideration of the Commission's *Report and Order* in the proceeding captioned above.¹ In its *Report and Order*, the Commission adopted standards regulating the entry of foreign carriers into the U.S. market for the provision of international telecommunications services and modified certain rules relevant to the provision of international telecommunications services. The Commission stated that its new rules will promote competition in the global market for communications services, prevent anticompetitive conduct in the provision of international services or facilities, and encourage foreign governments to open their telecommunications markets to competitive entry.² While BTNA supports these goals and most of the policies designed to implement them, it believes

¹ FCC 95-475, released November 30, 1995.

² Report and Order at ¶6.

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certain aspects of the *Report and Order* require modification in order to better serve the public interest. Specifically, BTNA requests that the Commission : (1) modify its new rule on single-end interconnection services to include non-facilities based U.S. resellers; (2) extend its regulatory safeguards to cover U.S. carrier acquisition of a dominant foreign carrier; and (3) strengthen the regulatory scheme applicable to non-equity business arrangements between U.S. carriers and dominant foreign carriers.

II. The Commission Should Permit Resellers to Engage in Single-End Interconnection.

In the Order, the Commission modified its rules concerning the provision of switched services over international private lines. Under the new rules U.S. facilities-based carriers may provide such services without a demonstration of equivalency at the foreign end and without prior Section 214 authorization, except where: (1) the U.S. carrier corresponds with a carrier that directly or indirectly owns the foreign half-circuit in a market not yet found to offer equivalent resale opportunities; or (2) the international private line is interconnected to the PSTN on both ends.³ The Commission chose not to extend the same flexibility to resellers, reasoning that such action would "allow resellers to gain at the direct expense of the facilities-based carriers without creating any avenue for facilities-based carriers to recoup lost settlement revenues."⁴

³ Report and Order at ¶¶157-160.

⁴ Report and Order at ¶158.

The Commission's stated reluctance to allow resellers to engage in single-end interconnection based on the claims of potential loss in settlement revenues by facilities-based carriers is nothing more than a red herring. The Commission's ultimate goal in permitting single-end interconnection is to foster the development of resale on the foreign end in order to facilitate U.S. entry into overseas telecommunications markets. BTNA submits that allowing U.S. resellers to engage in single-end interconnection services will bolster the Commission's efforts to open foreign markets, create downward price pressure on accounting rates⁵ and stimulate international traffic.

BTNA believes that extending this policy to U.S. resellers will enhance realization of the Commission's policy. In any event, U.S. facilities-based carriers will realize revenues from the provision of the underlying facility to the reseller and will maintain the right to compete for the single-end interconnection business. Any harm to the facilities-based carriers would be de minimis. Furthermore, the Commission's new market entry requirements will ensure that dominant foreign carriers in any particular market are not able to resell U.S. half channels and divert large volumes of U.S. switched traffic to private lines without U.S. carriers having similar rights in the foreign market. Thus, the market entry requirements should mitigate any potential diversion of switched traffic off the settlements regime.

⁵ See Report and Order at ¶157.

Accordingly, BTNA requests that the Commission reconsider its new rule and allow U.S. resellers to provide single-end interconnection service under the same conditions as U.S. facilities-based carriers.

III. The Commission Should Recognize the Potential for Anticompetitive Behavior that Exists When U.S.-Based Carriers Hold Ownership Interests In Foreign Carriers Having Market Power in the Destination Market.

In the Order, the Commission expressly excludes the application of competitive safeguards to U.S. carrier acquisition of an ownership interest in dominant foreign carriers. The Commission stated that such safeguards are unnecessary since U.S. carrier investment abroad does not present the same anticompetitive concerns as foreign carrier investment in U.S. carriers and that any restrictions might discourage U.S. carrier investment abroad.⁶

While BTNA recognizes the Commission's desire to encourage U.S. investment abroad, we believe the Commission may have underestimated the extent to which U.S. investment in dominant foreign carriers raises anticompetitive concerns in the U.S. market. When a U.S.-based carrier has an ownership interest (direct or indirect) in a foreign carrier that possesses market power, the potential for discriminatory treatment of non-affiliated U.S. carriers exists, regardless of "who owns whom." The fact that the U.S. carrier "owns" the dominant foreign carrier does not somehow make the foreign carrier less likely to discriminate in favor of its U.S. carrier affiliate and against other U.S.

⁶ Report and Order at ¶106.

competitors than if the dominant foreign carrier "owns" the U.S. carrier. One need only consider, for example, the competitive impact of a "Bell Atlantic" obtaining an interest in a foreign PTT. Indeed, it could be argued that the potential for discrimination is greater when the U.S. carrier is the "owner," since the foreign subsidiary will want to curry favor with its U.S. parent.

BTNA maintains that the Commission has ample jurisdiction to impose restrictions on such arrangements. Where the dominant foreign carrier holds an ownership interest in a U.S. carrier, the Commission has jurisdiction over that combined U.S. carrier entity. Nothing in the Communications Act or the Commission's rules suggests that the Commission's power over a U.S. carrier is somehow diminished if the U.S. carrier owns a foreign carrier.

If the Commission is truly concerned about the possibility and ramifications of discriminatory conduct when there are equity relationships between U.S. carriers and dominant foreign carriers, the Commission should recognize and address those concerns without regard to whether the U.S. carrier or the foreign carrier is making the investment.

IV. The Commission Should Modify the Regulatory Scheme Applicable to Non-Equity Business Relationships Between a U.S. Carrier and a Dominant Foreign Carrier.

In the Order, the Commission addressed the competitive aspects of allegedly non-exclusive co-marketing and other non-equity business alliances. The Commission concluded that such arrangements present a risk of

anticompetitive conduct that requires regulatory scrutiny.⁷ Accordingly, the Commission stated that it would apply dominant carrier regulation on a route-by route basis where the risk of anticompetitive conduct was substantial, and could require U.S. carriers participating in non-equity business arrangements with a dominant foreign carrier to file the relevant agreements where necessary.⁸

BTNA's Reply Comments filed earlier in this proceeding discussed in detail the serious public policy concerns presented by non-equity business alliances such as AT&T's WorldPartners and Uniworld ventures.⁹ Accordingly, BTNA supports the measures adopted by the Commission in its Order to address the problems posed by these business arrangements. However, the Commission, while making reference to Section 43.51 of its rules and Section 211 of the Communications Act, fails to specify how it plans to implement its safeguards.

Regulatory requirements intended to prevent non-equity business alliances from engaging in anticompetitive conduct will have little impact if the Commission is unaware that such business alliances exist. Under the current rules, U.S. carriers such as AT&T are not required to advise the Commission of the existence of co-marketing arrangements. In light of the significant potential for anticompetitive conduct presented by alliances such as WorldPartners and

⁷ Report and Order at ¶253.

⁸ *Id.*

⁹ See Reply Comments of BTNA, filed May 12, 1995, at 7-18.

Unisource, BTNA recommends that the Commission amend its rules to require U.S. carriers to notify the Commission within 30 days of the formation of co-marketing or other non-equity business arrangements with foreign carriers. Furthermore, the Commission should clarify that it will impose competitive safeguards in addition to dominant carrier regulation to such arrangements where necessary and appropriate. In sum, BTNA believes that the lack of an equity arrangement between a U.S. carrier and a foreign carrier should not limit the Commission's ability to impose regulatory restrictions where to do so is clearly in the public interest.

V. Conclusion

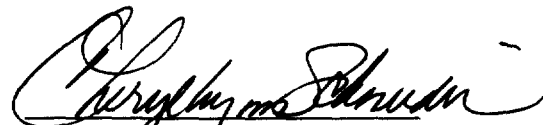
While BTNA believes that many of the rules and policies adopted in the *Report and Order* will go a long way toward achieving the goals the Commission outlined in this proceeding, it requests that the Commission reconsider its decision: (1) to permit U.S. resellers to engage in single-end interconnection; (2) to impose competitive safeguards in a situation where a U.S. based carrier acquires an ownership interest in a dominant foreign carrier; and (3) to modify

the regulatory scheme applicable to non-equity business relationships between
a U.S. carrier and a dominant foreign carrier.

Respectfully submitted,

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